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SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORACLE USA, INC., et al.,
Plaintiffs,
v.
SAP AG, et al.,
Defendants.

Case No. 07-CV-1658 PJH (EDL)

**DECLARATION OF JASON MCDONELL IN
SUPPORT OF DEFENDANTS' OPPOSITION
TO ORACLE'S MOTION TO MODIFY THE
PROTECTIVE ORDER AND TO COMPEL
DEPOSITION TESTIMONY AND FURTHER
RESPONSES TO REQUESTS FOR
ADMISSION**

Date: January 26, 2010; Time: 9:00 am
Courtroom: E, 15th Floor
Judge: Hon. Elizabeth D. Laporte

1 I, JASON MCDONELL, declare:

2 I am a partner with the law firm of Jones Day and counsel for Defendants in the above-
3 captioned matter. I make this declaration based on personal knowledge and, if called upon to do
4 so, could testify competently thereto.

5 1. Attached hereto as **Exhibit A** are true and correct copies of the cover page and
6 pages 9:10-21:17, 27:7-30:16, 52:17-56:2, 60:8-63:1, 79:19-80:6, 108:2-116:11, 135:8-139:13,
7 166:17-167:15 of the transcript of the October 13, 2009 Deposition of Scott Trainor.

8 2. I defended Mr. Trainor as an employee of SAP America, Inc., during his October
9 13, 2009. During that deposition, Defendants clawed back certain documents, but TN-
10 OR00852363 was neither clawed back during the deposition of Scott Trainor nor later clawed
11 back as a result of it. I have personally participated in various discussions, and exchanged
12 multiple written communications, with counsel for Plaintiffs to attempt to resolve Plaintiff's
13 objections to the documents clawed back during the deposition of Scott Trainor and their
14 objections to the instructions given to Mr. Trainor. None of those communications addressed
15 TN-OR00852363.

16 3. Plaintiffs' Deposition Exhibit 1683 reflects communications between multiple
17 SAP and TN employees. I have been personally involved in the review of this document to
18 determine whether any part of it reflects a privileged communication. Some of SAP and TN
19 employees reflected in the email were not attorneys, and of those that were attorneys, some were
20 acting in a business capacity during the emails that were exchanged and some were acting in a
21 legal capacity. The only portion of the exhibit that is now redacted is a communication between
22 Scott Trainor, an attorney for SAP America, Inc., and Mia Lee, an employee of SAP America,
23 Inc. Moreover, Defendants have offered to present Mr. Trainor for further examination regarding
24 Exhibit 1683, and that offer remains open.

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1 I declare under penalty of perjury under the laws of the United States and the State of
2 California that the foregoing is true and correct. Executed this 5th day of January 2010 in San
3 Francisco, California.

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6 /s/ Jason McDonell

7 Jason McDonell
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